

REMARKS

I. Support for the Amendments

Claims 5-8, 11, and 17 are presently in the application. Claims 5, 6, 8, 11, and 17 have been amended. Claim 1 has been canceled without prejudice to its pursuit in an appropriate continuation or divisional application.

Support for amended claims 5, 6, 8, 11, and 17 can be found in the original specification and claims. Additional support for amended claims 5 can be found, e.g., in the language of claim 1. Additional support for amended claims 5, 6, 8, 11, and 17 can be found, e.g., on page 9, lines 24-26; on page 15, lines 20-33; and in the Examples, particularly in Examples 2 and 3.

II. Status of the Claims

Claims 1-14 were originally in the application, with claim 1 being the independent claim. Claims 1-14 were subject to an Election/Restriction Requirement, and claims 1-8 and 11 (Group I) were elected with traverse.

Previously, claims 1-8, 11, and 17 were in the application. Claims 1 and 11 were the independent claims. Claims 9-10 and non-elected claims 12-14 were canceled without prejudice to their pursuit in an appropriate continuation or divisional application.

Claims 5-8, 11, and 17 are presently in the application. Claims 5, 6, 8, 11, and 17 have been amended. Claim 1 has been canceled without prejudice to its pursuit in an appropriate continuation or divisional application.

III. Receipt of the Priority Documents

Applicants thank the Examiner for acknowledging receipt of the priority documents.

IV. The Objection to Claim 11 is Accommodated

The Examiner has objected to claim 11 as containing a typographical error (p. 2). Applicants have amended claim 11 to correct the typographical error.

V. The Rejection of Claims 6, 8, 11, and 17 under 35 U.S.C. §112, Second Paragraph is Accommodated

The Examiner has rejected claims 6, 8, 11, and 17 under 35 U.S.C. §112, second paragraph (pp. 3-4). These are new rejections not necessitated by Applicants' amendment.

Applicants have amended claims 6, 8, 11, and 17. Applicants respectfully submit that the amended claims 6, 8, 11 and 17 addresses all of the Examiner's remarks.

Applicants have replaced the phrase "structural gene" in claims 6 and 11 with --a base sequence encoding the reporter molecule--. Claim 17 has been amended to make the language consistent with that of claim 11. Claim 6 has been amended regarding the expression of the reporter molecule under control of the human UCP-2 promoter.

Applicants have replaced the phrase “measuring the expression level of structural gene in a transformant” in claim 8 with the --measuring the expression level of a reporter molecule in a transformant-- and have amended the language of step a.

Applicants respectfully submit that claims 6, 8, 11, and 17 fulfill the requirements of 35 U.S.C. §112, second paragraph, thereby placing these claims in condition for allowance.

VI. The Rejection of Claim 1 Under 35 U.S.C. §102(b) Is Rendered Moot

The Examiner has rejected claim 1 under 35 U.S.C. §102(b) alleging anticipation by Lewin (Genes V, Oxford University Press and Cell Press, pp. 767-796 (1994)). Claim 1 has been canceled, and this rejection is now moot.

VII. The Objections to Claims 5 and 7 are Accommodated

The Examiner has indicated that claims 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

Applicants have amended claim 5 to be rewritten accordingly. Claim 7 is dependent on claim 5.

Applicants respectfully submit that claims 5 and 7 are in condition for allowance.

CONCLUSION

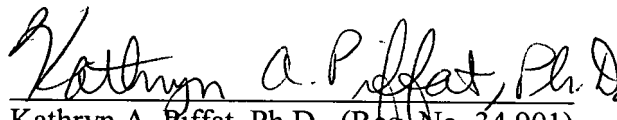
In view of the foregoing amendments and remarks, the present application is respectfully considered in condition for allowance. An early reconsideration and notice of allowance are earnestly solicited.

It is believed that all outstanding rejections have been addressed by this submission and that all the claims are in condition for allowance. If discussion of any amendment or remark made herein would advance this important case to allowance, the Examiner is invited to call the undersigned as soon as convenient.

Applicants hereby request a one-month extension of time for the Amendment and accompanying materials. If, however, a petition for an additional extension of time is required, then the Examiner is requested to treat this as a conditional petition for an extension of time and the Commissioner is hereby authorized to charge our deposit account no. 04-1105 for the appropriate fee. Although it is not believed that any additional fee (in addition to the fee concurrently submitted) is required to consider this submission, the Commissioner is hereby authorized to charge our deposit account no. 04-1105 should any fee be deemed necessary.

Respectfully submitted,

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